IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4087 OF 2006

Ulhas Namdeo Kodre .. Petitioner.

V/s.

Shivaji Genba Kodre & Others .. Respondents

Mr.P.S. Dani for the Petitioner.

Mr.A.B. Avhad for respondent No.1.

CORAM : J.P. DEVADHAR, J.

DATED : 11TH JULY, 2007.

P.C. :

1. The petitioner had filed Regular Civil Suit No.357 of 1996 in the Court of learned Civil Judge, Junior Division, Pune for partition and separate possession of the ancestral properties. The said suit was decreed by holding that the petitioner had 1/16th share in the ancestral property.

2. On appeal filed by the respondent No.1, the Appellate Court initially stayed the decree subject to the respondent No.4 depositing a sum of Rs.2,00,000/-. Accordingly, respondent No.1 deposited a sum of Rs.2,00,000/- in the Court of learned Additional District Judge, Pune. Lateron, the appeal was allowed and the matter was remanded back for fresh determination of the share of the

petitioner in the ancestral property.

3. Thereafter, the respondent No.1 filed an application in the disposed off appeal for withdrawal of the amount of Rs.2,00,000/-. By the impugned order dated 27th April, 2006, the Appellate Court allowed the application. Challenging the said order, present Writ Petition is filed.

4. The main argument of the petitioner is that eventhough the decree passed by the Trial Court has been set aside by the Appellate Court, the findings recorded by the Trial Court to the effect that the petitioner is a joint owner of the ancestral property is not disturbed by the Appellate Court. It is only the percentage of share of the petitioner which is required to be redetermined by the Trial Court. According to the petitioner, respondent No.1 has disposed of some of the joint family properties in the year 1993 and also in the year 2003. The petitioner seeks to make an application before the Trial Court for deposit of the sale proceeds realised by the respondent No.1 from sale of the ancestral property or in the alternative for retaining the amount of Rs.2,00,000/- deposited by the respondent No.1 before the lower Appellate Court.

5. The learned advocate for the respondent No.1 opposes the claim of the petitioner. He submits that once the decree is set aside, the amount deposited in the Appellate Court is liable to be refunded.

6. On careful consideration of the rival submissions, in my opinion, it would be just and proper to permit the petitioner to approach the Trial Court by way of fresh application and seek appropriate orders.

7. Accordingly, the Writ Petition is disposed of by passing the following order :

i. The order passed by the Lower Appellate Court shall not be enforced for a period of four months from today to enable the petitioner to obtain appropriate orders from the Trial Court.

ii. Petitioner is at liberty to move an application before the Trial Court within a period of two weeks from today seeking appropriate reliefs regarding deposit of sale proceeds by the respondent No.1 or in the alternative to retain the amount of Rs.2,00,000/- lying deposited in the lower

Appellate Court.

iii. If the petitioner fails to move application within a period of two weeks from today, the respondent No.1 is at liberty to enforce the order passed by the Appellate Court.

iv. If the petitioner files an application, as stated hereinabove, the Trial Court is directed to dispose of the application of the Petitioner within a period of three months from the date of the application.

v. Till then, the amount of Rs.2,00,000/- deposited in the Appellate Court with accrued interest be invested in any nationalised bank initially for a period of three months.

vi. Contentions of both the parties are kept open.

6. The writ petition is disposed of in terms of this order with no order as to costs.

(J.P. DEVADHAR, J.)